



Entered on Docket
May 14, 2010

A handwritten signature in cursive script, reading "Bruce A. Markell".

Hon. Bruce A. Markell
United States Bankruptcy Judge

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E-filed on: May 12, 2010

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

HARRY K. FULLMER
SUSAN I. FULLMER
Debtors.

Case No. BK-S-10-12712-BAM
Chapter 13

Date of Hearing: May 06, 2010
Time of Hearing: 3:00 pm.
Place: Courtroom No. 3, Third Floor
Foley Federal Building
300 S. Las Vegas Blvd.
Las Vegas, NV 89101

Judge: Hon. Bruce A. Markell

ORDER TO VALUE COLLATERAL; ORDER TO AVOID LIEN

THIS MATTER having come before the Court for a hearing on May 06, 2010 on Debtor's MOTION TO VALUE COLLATERAL; MOTION TO AVOID LIEN, and based upon the papers and pleadings on file herein, and good cause appearing; the Court finds as follows:

1. The Debtors' principal residence located at 2138 Buckeye Reef Street,

1 Henderson, Nevada 89052 (the "Subject Property") is valued at \$165,000.00 as of the date of
2 Debtor's Chapter 13 Petition.

3 2. The Subject Property is collateral for a senior secured claim of GMAC Mortgage,
4 LLC ("Senior Lienholder").

5 3. Senior Lienholder has filed a Proof of Claim related to its claim #5-1, and has
6 assigned to this claim \$185,604.00. The Debtor's schedules list the amount of Senior
7 Lienholder's claims as \$185,604.00.

8 4. The Subject Property is also collateral for a junior secured claim of GMAC
9 Mortgage, LLC ("Junior Lienholder").

10 5. Junior Lienholder has *not* filed a Proof of Claim related to its claim, but has
11 assigned to this claim \$31,787.00. The Debtors' schedules list the amount of Junior Lienholder's
12 claims as \$31,787.00.

13 6. Given the above, Junior Lienholder's interest in the Debtor's interest in the
14 Subject Property has no value.

15 THEREFORE, IT IS HEREBY ORDERED THAT, pursuant to Zimmer v. PSB Lending
16 Corp. (*In re Zimmer*), 313 F.3d 1220 (9th Cir. 2002), and 11 U.S.C. §§ 506(a) and 506(d), Junior
17 Lienholder's claim is unsecured, and shall be treated as unsecured for all purposes in this case,
18 including the manner in which such claim is treated and paid in Debtor's chapter 13 plan; and IT
19 IS FURTHER ORDERED THAT, should Debtor receive a discharge in this case, Junior
20 Lienholder shall as soon as practicable thereafter take all necessary and appropriate steps to
21 remove its lien of record, and to ensure that Debtors' title to the Subject Property is clear of any
22 cloud on title related to Junior Lienholder's claim.

23 This court hereby reserves jurisdiction with respect to any dispute over the actions
24 necessary to comply with this paragraph; and IT IS FURTHER ORDERED THAT, should this
25 matter be dismissed or converted to a Chapter 7 the instant Order shall be vacated.

26 IT IS FURTHER ORDERED THAT nothing in this order shall be deemed to be an
27 allowance or disallowance of any claim of Senior Lienholder or Junior Lienholder, and any party
28

1 in interest, including the Debtor or the Trustee, may hereafter object to either claim on any
2 ground recognized by the Bankruptcy Code.

3 IT IS SO ORDERED.

4
5 Approved/Disapproved

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7
8 Kathleen A. Leavitt, Chapter 13 Trustee

9 Prepared and submitted by:

10 **SMITH AND KIM, ATTORNEYS AT LAW**

11 /s/ Howard C. Kim
12 Howard C. Kim, Esq. (NV Bar No. 10386)
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16 *Attorneys for Debtors Harry and Susan Fullmer*

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ALTERNATIVE METHOD re: RULE 9021:

In accordance with Local Rule 9021, the undersigned certifies:

___ The court waived the requirements of approval under LR 9021.

X This is a chapter 7 or 13 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below:

___ This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below :

___ I certify that I have served a copy of this order with the motion, and no parties appeared or filed written objections.

APPROVED DISAPPROVED NO RESPONSE

Chapter 13 Trustee
Kathleen A. Leavitt
201 Las Vegas Blvd South
Suite 200
Las Vegas, NV 89101

X

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

SMITH AND KIM ATTORNEYS AT
LAW

/s/ Howard C. Kim
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